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Paper No. 13

Albert S. Michalik
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Sammamish, WA 98074

In re Application of: Capps et al.)
Application No. 09/502,970) **DECISION ON PETITION TO**
Attorney Docket No. 2300) **WITHDRAW HOLDING OF**
Filed: February 11, 1000) **ABANDONMENT UNDER 37 CFR**
For: UNIFIED NAVIGATION SHELL) **§1.181 (A)**
USER INTERFACE)

This is a decision on the request for reconsideration, filed September 12, 2003, requesting the Withdrawal of the Holding of Abandonment of the above-identified application. The request is being treated as a petition under 37 CFR §1.181. This application was held abandoned for failure to file a timely response to the restriction requirement mailed July 2, 2002. A Notice of Abandonment was mailed on March 25, 2003 (Paper No. 8).

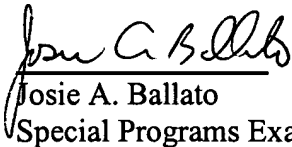
In the request for reconsideration, applicants' representative has supplemented the original petition with a statement that a change of address was filed prior to July 2, 2002, but that the practitioner has no evidence of that change being filed other than the Office mailing of March 25, 2003 (the Notice of Abandonment) which was addressed to an improper address in "Sammaish" Washington. The practitioner also states the mail delivered to the previous Bellevue address was being forwarded, but that the Office communication of July 2, 2002 was not received by the practitioner.

A review of the application file in conjunction with the practitioner's statements establishes an apparent irregularity associated with the initial mailing of the restriction requirement. The communication has two cover letters, one dated July 2, 2002 addressed to Bellevue WA and a second dated August 5, 2002 addressed to Sammaish [sic] WA. There is nothing in the record to explain why two possible mailings occurred of the same letter. In addition, it is clear the second mailing and the Notice of Abandonment were sent to an address similar to the intended address, but enough at variance that the restriction requirement might not have been received by the practitioner even though the Notice of Abandonment was. Due to an obvious clerical error, the practitioner's change of address was not properly processed.

Because of these irregularities in Office procedure the presumption of receipt in accordance with the guidelines set forth in MPEP § 711.03(c) has been overcome.

The petition is **GRANTED**. The holding of abandonment is withdrawn.

The application file will be forwarded to the Technology Center support staff. The restriction requirement will be remailed with the one month period for reply restarted to run from the date of the remailing. Telephone inquiries should be directed to the undersigned at (703) 308-0269.

A handwritten signature in cursive script, appearing to read "Josie A. Ballato", is written over a horizontal line.

Josie A. Ballato
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security



#12 2174

PATENT
Attorney Docket No. 2300

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

CAPPS et al.

Group Art Unit: 2174

Serial No. 09/502,970

Examiner: KE, P.

Filed: February 11, 2000

For: Unified Navigation Shell User Interface

**REQUEST FOR RECONSIDERATION OF DECISION ON PETITION TO WITHDRAW
THE HOLDING OF ABANDONMENT UNDER 37 § C.F.R. 1.181(A)**

Commissioner for Patents
Alexandria, VA 22313-1450

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Attn:

Technology Center 2100

Dear Sir:

Petitioner hereby requests reconsideration of the denial to grant the petition to withdraw the holding of abandonment in this matter. Petitioner submits that that the Office communication on which the holding of abandonment is based was not, and could not in fact have been received by Petitioner, through no fault of Petitioner, for at least the additional reasons set forth in the Supplemental Statement of Facts set forth below. No fee is required.

Supplemental Statement of Facts

1. On March 25, 2003, a Notice of Abandonment was mailed to Petitioner (the undersigned attorney for applicants), addressed to 220 Eighth Avenue 704, Suite 193 Sammamish, Washington 98074 (which is an incorrect address). The basis for the Notice was that no timely response was filed to an Office communication (a restriction requirement) mailed July 2, 2002.
2. On May 19, 2003 Petitioner petitioned for a withdrawal of the holding of abandonment, and provided evidence indicating that the Office communication was not received by practitioner, and that a search of the file jacket and docket records was conducted and indicated that the Office communication was not received. A copy of the docket record was provided, along with several references thereto in practitioner's (Petitioner's) statement of facts, pursuant to MPEP §711.03(c).

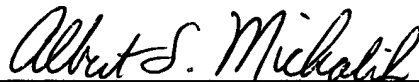
3. On July 28, 2003, a Decision was mailed denying the petition, because the evidence apparently should have directed as to why the mailing was not received at Petitioner's prior Bellevue address. However, Petitioner had not seen a copy of the July 2, 2002 Office communication, and thus had no way of knowing that the Office communication was mailed to the Bellevue address. The Patent Office obtained Petitioner's Sammamish address from *somewhere*, as evidenced by the Notice of Abandonment having been mailed to Sammamish, (albeit to a variation of applicants' correct address), and Petitioner thus presumed that because the Notice of Abandonment was mailed to a variation of applicants' Sammamish address, that the address submitted in the change of address form filed in the case (prior to July 2, 2002) was received but incorrectly entered at the Patent Office, thereby causing the problem.
4. Petitioner has thoroughly considered what might have happened to cause the Office communication to not have been delivered to Petitioner, and can only think of two possible scenarios, neither of which are any fault of Petitioner.
 - a. The change of address form (mailed in a group with a number of others prior to July 2, 2002) was delayed or lost in the mail or in its processing (or possibly not processed at all), and as a result the July 2, 2002 Office communication was mailed to Petitioner's Bellevue address. Petitioner has been unable to find concrete evidence that this particular change of address request was timely processed at the Patent Office; a search of Petitioner's files shows that the enclosed postcard was not returned. However as Petitioner filed no other correspondence in this matter (until the prior Petition), Petitioner submits that it appears that the Patent Office did at some time obtain Petitioner's Sammamish address, otherwise the Notice of Abandonment would not have been spontaneously sent to Sammamish, WA.
 - b. Notwithstanding, even if the Office communication was in fact mailed to Petitioner's Bellevue address, then the Post Office should have forwarded it to 704 228th Avenue NE, Suite 193 Sammamish Washington 98074. Petitioner declares that the Post Office was instructed to forward all mail addressed to the Bellevue, WA address to Petitioner's Sammamish address in late May 2002 (well in advance of the July 2, 2002 mailing date of the Office communication); this forwarding address continues to today, as evidenced by a copy of an unrelated envelope recently mailed to Petitioner's former Bellevue address and properly forwarded to Petitioner's correct Sammamish address). If indeed sent to Petitioner's former Bellevue address, then a Postal error also occurred, as no such forwarding ever took place, and Petitioner did not receive the Office communication.
5. Regardless of whether sent to Bellevue or to an erroneous address in Sammamish, Petitioner did nothing incorrect, and either a Patent Office or Post Office error (or both) was responsible for Petitioner not having received the Office communication.
6. I hereby declare that all statements made herein of my own knowledge are true, that all statements made on information and belief are believed to be true; and further that these

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statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

For at least the foregoing reasons, Petitioner submits that the petition to withdraw the holding of abandonment be granted, and requests that the Office action be re-mailed.

Respectfully submitted,



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Date: September 9, 2003

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Serial No. 09/502,970



CERTIFICATE OF MAILING

I hereby certify that this REQUEST FOR RECONSIDERATION along with supporting evidence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450, Alexandria, Virginia 22313-1450.

Date: September 9, 2003


Albert S. Michalik

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